



**UNITED STATES ENVIRONMENTAL PROTECTION  
AGENCY REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

**VIA CERTIFIED MAIL AND ELECTRONIC TRANSMISSION**

Mr. I.L. Morris, President  
Waco Oil & Gas Company  
P.O. Box 397  
Glenville, West Virginia 26351

Mr. Stephen Holloway, Land Department Manager  
Waco Oil & Gas Company  
[Steve.holloway@wacowv.com](mailto:Steve.holloway@wacowv.com)

Dear Mr. Morris and Mr. Holloway:

Enclosed please find EPA's Second Information Requirement issued pursuant to Section 308 of the Clean Water Act ("CWA"), 33 U.S.C. § 1318 that requires Waco Oil and Gas Company ("Waco" or "Respondent") personnel to provide information regarding construction activities on the property located approximately 1.25 miles southeast on Route 19 from the intersection of Route 19 and I-79 in Sutton, Braxton County, West Virginia ("the Site").

On June 15, 2020, EPA sent an Information Requirement ("First Information Requirement") to Waco Oil and Gas Company ("Waco" or "Respondent"). EPA received Waco's response on July 15, 2020.

Waco's response to the First Information Requirement was incomplete for the following reasons:

- (1) Waco failed to submit its Storm Water Pollution Prevention Plan ("SWPPP"), a required component of its permit. While EPA eventually received portions of Waco's 2017 SWPPP, Waco has not submitted the entire SWPPP, including the appendices. On information and belief, the omitted appendices include, but are not limited to, Site maps with the locations of best management practices ("BMPs") and erosion and sedimentation ("E&S") controls.
- (2) Waco failed to submit an updated version of the 2017 SWPPP and/or the SWPPP associated with Waco's June 2020 Notice of Intent for coverage under the General NPDES Permit for discharges of stormwater associated with construction activity, even after Waco's contractor agreed to provide these documents to EPA during a telephone conference on September 22, 2020.

On September 17, 2020, EPA sent Waco an Insufficient Response to Information Requirement Letter (“Insufficient Response Letter”) for the missing information with a deadline to respond by October 2, 2020. EPA received a response from Waco on October 9, 2020 to the Insufficient Response Letter. As conceded by Waco’s counsel, Waco’s October 9, 2020 response was incomplete and, in addition, failed to include the required certification.

Although Waco’s obligation to supplement its responses is ongoing, EPA has received no additional information or documents responsive to its First Information Requirement or Insufficient Response Letter since Waco’s October 9, 2020 response. Waco’s failure to fully respond includes its failure to provide information related to the leasing of and construction on a portion of the Site by the United Parcel Service (“UPS”).

EPA now issues this Second Information Requirement to Waco. Your response is required within **fifteen (15) days of receipt of this letter**. Please submit your response electronically to Katelyn Almeter at [almeter.katelyn@epa.gov](mailto:almeter.katelyn@epa.gov) and Aviva Reinfeld at [reinfeld.aviva@epa.gov](mailto:reinfeld.aviva@epa.gov).

Compliance with this Information Requirement is mandatory. Failure to respond fully and truthfully to the Information Requirement in accordance with the deadlines set forth, or to justify such failure to respond, can result in enforcement action by EPA pursuant to Section 309 of the CWA, 33 U.S.C. § 1319. **Providing misleading, false, fictitious, or fraudulent statements or representations may subject you to criminal penalties under 18 U.S.C. § 1001.** The information you provide may be used by EPA in administrative, civil, or criminal proceedings.

As noted in the First Information Requirement, you may assert a business confidentiality claim covering all or part of the information required herein in the manner described in 40 C.F.R. § 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent and by means of the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies the information required herein when it is received, EPA may make the information available to the public without further notice to you.

This Information Requirement is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35 (See 5 C.F.R. § 1320.3(c)).

This request is of an ongoing nature. Should any additional information or documentation become available after provision of the responsive documents by Respondent then Respondent is under an obligation to provide such additional information or documentation to EPA.

Should you have any questions regarding this Information Requirement, please contact Katelyn Almeter at (215) 814-2797, [almeter.katelyn@epa.gov](mailto:almeter.katelyn@epa.gov), or your counsel may contact Aviva Reinfeld, Assistant Regional Counsel, at (215) 814-2632, [reinfeld.aviva@epa.gov](mailto:reinfeld.aviva@epa.gov).

Sincerely,

Richard A. Rogers, Branch Chief  
Water Branch  
Enforcement and Compliance Assurance Division

Enclosure (1)

cc: Jeremy Bandy (WVDEP) ([jeremy.w.bandy@wv.gov](mailto:jeremy.w.bandy@wv.gov))  
Brad Wright (WVDEP) ([brad.m.wright@wv.gov](mailto:brad.m.wright@wv.gov))  
Katelyn Almeter (EPA) ([almeter.katelyn@epa.gov](mailto:almeter.katelyn@epa.gov))  
Aviva Reinfeld, Esq. (EPA) ([reinfeld.aviva@epa.gov](mailto:reinfeld.aviva@epa.gov))  
Roger Hanshaw, Esq. ([rhanshaw@bowlesrice.com](mailto:rhanshaw@bowlesrice.com))  
Marc Monteleone, Esq. ([mmonteleone@bowlesrice.com](mailto:mmonteleone@bowlesrice.com))

## INFORMATION REQUEST

This information is requested pursuant to Section 308 of the Clean Water Act, 33 U.S.C. § 1318. The instructions and definitions for responding to this Information Request are as follows:

### A. Instructions

1. Provide a separate narrative response for each question set forth below and for each subpart of each question.
2. Identify each answer with the corresponding number of the question and subpart to which it responds.
3. State the name, address, email address, telephone number, and occupation of each person providing responses, or contributing information to responses, to each request for information below.
4. Provide all documents in your possession which relate to the responses given. With respect to each document, identify the date, author, addressee, current location, and custodian and identify the question or subpart to which it relates.
5. Answer each question to the extent possible. If any question cannot be answered in full, explain why to the extent possible. If your responses are qualified in any manner, please explain.
6. If information or documents unknown or unavailable to you as of the date of your response to this request become known or available to you after submitting your response to the request, you must supplement your response to EPA. Moreover, should you find at any time after the submission of your response that any portion of the submitted information is false or misrepresents the truth, you must notify EPA of this fact as soon as possible and provide a corrected response.
7. Each submission pursuant to this request must be accompanied by the following certification and must be signed by a representative of Waco Oil and Gas Co., Inc. and authorized to respond on behalf of that entity.

*"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for known violations."*

Signed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

8. All information shall be submitted within 15 days of receipt of this Request for Information electronically to:

Katelyn Almeter  
Enforcement and Compliance Assurance Division  
United States Environmental Protection Agency, Region III  
1650 Arch Street (3ED31)  
Philadelphia, PA 19103-2029  
[almeter.katelyn@epa.gov](mailto:almeter.katelyn@epa.gov)

## **B. Definitions**

1. The terms “you” and “your” shall refer to Waco Oil and Gas Co., Inc. (hereinafter, “Waco” or “Respondent”) and its subsidiaries, past and present members, affiliates, predecessors or successors-in-interest, assignees, managers, officers, supervisors, officials, employees, servants, agents, representatives, consultants, and contractors and all other person acting on its behalf.
2. The “United Parcel Service” or “UPS” refers to the corporation the United Parcel Service, Inc., and its subsidiaries, past and present members, affiliates, predecessors or successors-in-interest, assignees, managers, officers, supervisors, officials, employees, servants, agents, representatives, consultants, and contractors and all other person acting on its behalf.
3. The term “document” shall refer to a “writing,” “recording,” and “photograph” as those terms are defined in Rule 1001 of the Federal Rules of Evidence. The term “document” shall also refer to electronically stored “writings,” “recordings,” “emails,” and “reports,” among other things, created in the ordinary course of business and that are relevant to the operation or business undertakings of Waco or other business entities owned or operated by Waco. Documents should be produced as they are kept in the usual course of business.
4. The term “communication” means any act or instance of information being transmitted, including by verbal, written, and electronic means.
5. The term “Route 19 Site” or “Site” refers to Braxton County Parcel ID: 04-06-008Q-0009-0000 located approximately 1.25 miles southeast on Route 19 from the intersection of Route 19 and I-79 in Sutton, Braxton County, West Virginia (38.6087, -80.7368) as shown in Exhibit A to EPA’s First Information Request.

6. The term “pollutant” refers to “dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.” 40 C.F.R. § 122.2.
7. The term “Best Management Practices” or “BMPs” refers to “schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of ‘waters of the United States.’ BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.” 40 C.F.R. § 122.2.
8. The term “discharge of fill material” refers to the addition of any pollutant, including rock, sand, dirt, or other material, into waters of the United States which has the effect of replacing portions of those waters with dry land or changing the bottom elevation of those waters, as defined in 40 CFR Part 232.
9. The term “work” includes, but is not limited to, construction of any structures, or the grading, mechanized land clearing, filling, and other land disturbing activities conducted on the Site.
10. The term “Notice of Intent” refers to the application for coverage under a general National Pollution Discharge Elimination System (“NPDES”) permit issued by the West Virginia Department of Environmental Protection (“WVDEP”), authorizing certain discharges of pollutants, including stormwater.
11. The term “identify” with respect to a natural person means to provide that person’s name, address, telephone number, title, and relationship to Respondent. The term “identify” with respect to a business entity means to provide that entity’s name, address, and relationship to the Respondent, and to provide the name, address, telephone number, and title of an individual who can provide information related to, and on behalf of, the entity.
12. The term “Day” shall mean a calendar day. In computing any period of time under this Request pursuant to Section 308, where the last day would fall on a Saturday, Sunday, federal or state holiday, the period shall run until the close of the next business day.

### **C. Request for Information**

The Respondent is hereby required, pursuant to Section 308 of the Clean Water Act, 33 U.S.C. § 1318, to submit the following information pursuant to the instructions and definitions set forth above.

1. Provide all information responsive to EPA's First Information Requirement and Insufficient Response Letter that has not yet been submitted to EPA, including but not limited to:
  - a. All Storm Water Pollution Prevention Plans ("SWPPPs") for the Site in their entirety, including all appendices and maps. This includes, but is not limited to, Appendix A to the 2017 SWPPP that includes a map of BMPs, and the SWPPP accompanying Waco's 2020 Notice of Intent for permit coverage under an NPDES stormwater construction permit; and
  - b. Certification of Waco's response received Oct. 9, 2020.
2. Describe the nature of UPS's relationship with Waco Oil and Gas Company regarding the Site. State the date on which this relationship began, the date negotiations between UPS and Waco began, and the date of the first communication between UPS and Waco regarding the Site, including any oral communications.
3. Provide copies of all written communications between Waco and UPS regarding the Site, including but not limited to, any emails, documents, and other written communications. Describe any oral communications.
4. State the nature of UPS's business on the Route 19 Site from the dates provided in response to No. 2 above to present.
5. Provide copies of all permits, and/or other authorizations issued or provided by any governmental entity (federal, state, local) to conduct construction or operations at the Site since 2016. Your response must include, but is not limited to, any permits obtained by any lessee, tenant or owners on Site from January 1, 2016 to present.
6. Provide copies of all applications for permits or other authorizations submitted to any governmental entity (federal, state, local) to conduct construction or operations at the Site whether submitted by Waco or any lessee, tenant or prior owner from January 1, 2016 to the present.
7. Identify all entities who are party to any contract or agreement to use or perform work on the Site, and provide the name(s), address(es), and telephone numbers of the individual(s) or contractor(s) responsible for conducting the work. Provide copies of any and all agreements, or parts thereof reduced to writing, and describe any oral agreements.
8. Identify and provide all contracts or agreements, including lease agreements, that have

been entered between Waco and any person(s) or business(es) regarding the Site. Indicate whether such contract or agreement is currently in effect. This request includes, but is not limited to:

- a. Any oral agreements between Waco and any person(s) or business(es) with an interest in the Site; and
  - b. Any agreements, including the lease agreement between Waco and the United Parcel Service.
9. Do UPS and Waco have any indemnity agreements? If so, please explain and provide the agreement(s).
10. What is the size of the acreage within the Site over which UPS has an ownership interest? Provide a map that shows the portion of the Site leased to UPS.
11. In Waco's response to EPA's Insufficient Response Letter sent to EPA on October 9, 2020, Paragraph 27.c.ii., it stated:

“Waco has no plans for future construction activity on the Site. At this time, Waco plans only to market the Site to prospective tenants or purchasers of the Site. If a suitable tenant is found, Waco will take the required steps necessary to proceed on the Site in compliance with applicable law, but until such an opportunity is identified, Waco has no plans to proceed with additional work at the Site.”

Describe and provide all documents reflecting any and all efforts by Waco to “market the Site to prospective tenants or purchasers of the Site,” including all marketing materials, advertisement and all communications with any prospective or actual tenant or purchaser of the Site.
12. Describe and provide all documents reflecting any communications between Waco and any federal, state or local government entity regarding efforts by Waco to “market the Site to prospective tenants or purchasers of the Site,” and any successful efforts by Waco to obtain tenants or purchasers of the Site.
13. Describe and provide all documents reflecting any communication between Waco and any real estate agent or broker, any land agent, or any other third party regarding efforts by Waco to “market the Site to prospective tenants or purchasers of the Site,” and any successful efforts by Waco to obtain tenants or purchasers of the Site.
14. Describe all communications Waco had with any prospective tenants, lessees, or purchasers of the Site, including the names, businesses, and intended use of the Site for every prospective tenant, lessee, or purchaser, and the date of these communications. Provide all emails and documents related to these discussions.
15. Provide copies of all documents related to work, as defined in the Instructions above,



performed at the Site since February 26, 2020 by any party. Such documents should include but not be limited to plans, drawings, specifications, permits, agreements, contracts, receipts, invoices, checks, and other documents which relate to work at the Site or billing or compensation for work at the Site. State the amount of compensation paid for each instance of work performed at the Site. Provide documentation of all compensation paid for work performed at the Site.

16. In Waco's response to EPA's Insufficient Response Letter sent to EPA on October 9, 2020, Paragraph 27.c.ii., it stated:

"Waco has performed no earthmoving or excavation work on the Site since submitting the June 30, 2020 application. Waco has delayed the performance of any such work until Waco, West Virginia DEP, and EPA have agreed on a plan to guide the additional work, if any, to be performed on the Site."

Please describe what work has been delayed, and any plans by Waco or its lessees to perform future work on the Site. Explain the nature of this work, where it would be located on the Site and when the work would be conducted.

17. Did Waco or UPS conduct any land disturbance to construct any buildings on the Site? If so, how many acres of land were disturbed?
18. What is the status of construction on the Site?
19. Provide a description of what structures are built on the Site and for what purpose.
20. Did Waco disclose to UPS at any time the fact of or substance of its negotiations with EPA regarding Waco's potential violations of the Clean Water Act associated with the Site?